

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1690 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

ISHWARLAL SHIVLAL PATEL SINCE DECEASED BY HIS HEIRS

Versus

STATE OF GUJARAT & ORS.

Appearance:

Shri S.H. Sanjanwala, Advocate, for the
Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 22/07/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Surat (respondent No. 2 herein) on 4th April 1984 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by

the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 3 herein) on 14th December 1988 in Appeal No. Surat-1322 of 1984 is under challenge in this petition under articles 226 and 227 of the Constitution of India. By his impugned order, respondent No. 2 declared the holding of the original petitioner to be in excess of the ceiling limit by 1636 square meters.

2. The facts giving rise to this petition move in a narrow compass. The original petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Surat. That form was processed by respondent No. 2. By his order passed on 4th April 1984 under sec. 8(4) of the Act, respondent No. 2 declared the holding of the declarant to be in excess of the ceiling limit by 1636 square meters. Its copy is at Annexure A to this petition. The aggrieved declarant carried the matter in appeal before respondent No. 3 under sec. 33 of the Act. It was registered as Appeal No. Surat-1322 of 1984. It appears that on behalf of the appellant written submissions were made at the time of hearing. A copy thereof is at Annexure C to this petition. By the order passed on 14th December 1988 in the aforesaid appeal, respondent No. 3 dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioner thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition. During the pendency of this petition the original petitioner died leaving behind him his heirs and legal representatives who are substituted in his place for the purpose of this petition.

3. The grievance voiced by and on behalf of the petitioners is that objections to the draft statement were not considered. Their second grievance is that no opportunity of hearing was given to the declarant inasmuch as, though he indicated in his objections to the draft statement that he had shifted to Unjha and gave his address thereat, the notices of hearing were sent to his old address at Surat. Learned Advocate Shri Sanjanwala for the petitioners has further submitted that the constructed property ought not to have been included in the declarant's holding in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. As against this, learned Assistant Government Pleader Shri Sompura for the respondents has submitted

that the so-called objections against the draft statement are not in the file of respondent No. 2. He has further submitted that notices were sent and they were received on behalf of the petitioner at his address at Surat and no intimation was given to respondent No. 2 about the change of his address.

4. Learned Advocate Shri Sanjanwala for the petitioner has shown to me a copy of the objections to the draft statement with its receipt acknowledged by the concerned clerk from the office of respondent No. 2 on 1st December 1982. On verification, learned Assistant Government Pleader Shri Sompura could not dispute the genuineness of the stamp impression of the office of respondent No. 2 and the signature of the concerned official at the relevant time. If the objections are not kept in the file of respondent No.2 for the relevant case, the declarant cannot and need not be blamed. It appears that a contention in that regard was specifically taken before respondent No. 3. It is unfortunate that respondent No. 3, instead of asking the appellant to produce the proof of submission of his draft statements in the office of respondent No. 2, straightway decided the case against the appellant in that regard only on the ground that such objections were not in the file of respondent No. 2. Such approach on the part of respondent No. 2 can be said to be too hypertechnical to be sustained in law.

5. It transpires from a copy of the objections duly acknowledged by some official in the office of respondent No. 2 that the declarant had given intimation regarding the change of his address from Surat to Unjha. In spite of that, if the notices were sent to his old address and if they were accepted by someone else, the declarant need not be blamed if that someone else did not inform the declarant about such notices. The fact would however remain that the declarant did not get any notice of hearing at his Unjha address. It is not the case of the respondents that the declarant was served with the notices of hearing or any of them at his Unjha address. In that view of the matter, the impugned order at Annexure A to this petition can be said to be in contravention of the audi alteram partem rule. It would therefore be a void order. An appellate order confirming such void order is of no consequence in view of the settled legal position in that regard.

6. It transpires from the material on record that the original petitioner was running some industrial unit in the land shown by him in his declaration under sec.

6(1) of the Act. That industrial unit is housed in some constructed industrial shed. Such constructed property together with the land appurtenant thereto has to be excluded from the holding in view of the aforesaid binding ruling of the Supreme Court if it was found to be in existence prior to coming into force of the Act in an authorised manner. It appears that neither respondent No. 1 nor respondent No. 2 has applied his mind to this aspect of the matter. The impugned orders at Annexures A and B to this petition can therefore be said to be suffering from the vice of non-application of mind on the part of the respective authors.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition cannot be sustained in law. It has to be quashed and set aside. The matter has to be remanded to respondent No. 2 for restoration of the proceeding to file and for his fresh decision according to law after giving an opportunity of hearing to the heirs and legal representatives of the landholder at their Unjha address. They may be asked to produce a copy of the objections to the draft statement submitted by the deceased landholder on 1st December 1982. Respondent No. 2 may also keep in mind the aforesaid binding ruling of the Supreme Court while disposing of the case restored pursuant to this judgment.

8. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No. 2 herein) on 4th April 1984 at Annexure A to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 14th December 1988 in Appeal No. Surat-1322 of 1984 at Annexure B to this petition is quashed and set aside. The matter is remanded to respondent No. 2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
